

1 Chief Judge Marsha J. Pechman
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12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT SEATTLE
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18 UNITED STATES OF AMERICA,) NO. CR06-157MJP
19 v.) GOVERNMENT'S OPPOSITION
20 HENRY ROSENAU,) TO DEFENDANT'S MOTION TO
21) COMPEL MLAT MATERIALS
22) AND SEALED COURT
23) DOCUMENTS
24) Noted: April 20, 20102
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19 The United States of America, by and through Jenny A. Durkan, United States
20 Attorney for the Western District of Washington, and Susan M. Roe and Marc A. Perez,
21 Assistant United States Attorneys for said District, and files this opposition to the defendant's
22 Motion to Compel which asks for (1) materials of the United State Government to Canadian
23 Government request, made pursuant to the Mutual Legal Assistance Treaty between the two
24 sovereigns, in an international facilitation of prosecuting criminals and (2) sealed court and
grand jury documents. Dkt # 102.

1 The defendant has a right to certain discoverable materials. Federal Rule of Criminal
 2 Procedure 16 and Local Rule 16 list the required production,¹ of which a relevant section is

3 (A)(1) (E) **Documents and Objects.** Upon a defendant's request, the
 4 government must permit the defendant to inspect and to copy or photograph
 5 books, papers, documents, data, photographs, tangible objects, buildings or places, or copies
 6 of portions of any of these items, if the item is within the government's possession, custody,
 7 or control and

8 (i) the item is material to preparing the defense;
 9 (ii) the government intends to use the item in its case-in-chief at trial ; or
 10 (iii) the item was obtained from or belongs to the defendant.

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 12 Another relevant section is Rule 16 (a)(2). **Information Not Subject to Disclosure.** Except
 13 as Rule 16(a)(1) provides otherwise, this rule does not authorize the discovery or inspection
 14 of reports, memoranda, or other internal government documents made by an attorney for the
 15 government or other government agent in connection with investigating or prosecuting the
 16 case.

17 The defense appears to be requesting internal government documents which relate to
 18 the preparation, writing, revising, consulting on and presenting of the United States' official
 19 MLAT request to Canada. These are all internal government documents which are not
 20 discoverable under Rule 16 or are properly provided by the prosecution in a criminal case.

21 Whether a Canadian is entitled to receive MLAT documents from his government is a
 22 matter to be decided in Canada. The United States has no basis to involve itself in a
 23 Canadian citizen's request of his government and has inadequate knowledge of the Canadian
 24 laws on that matter.

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 27 ¹There is no claim that the requested materials would be discoverable pursuant as *Jencks*,
 28 *Brady* or *Giglio* matters.

Generally, however, according to the Office of International Affairs, Department of Justice, the governments view MLAT requests as confidential and protected sovereign speech and not open to individual claims or causes of action.

Therefore, the internal DOJ memoranda reports, drafts, and other internal documents relating to the United States' request under the MLAT are not discoverable in a criminal case. Any claim in the Canadian court is better handled within Canada.

The defendant also requests that the sealed documents relating to Zachary Miraback be released to him and, alternatively, be preserved for appeal. The government objects to the release of the documents as a violation of Mr. Miraback's privacy and further notes that this Court has reviewed the documents *in camera* and found no *Brady* or *Giglio* materials contained within. The defendant has not established any basis for unsealing court documents of something other than a witness in this case. Therefore, the documents should remain sealed.

DATED this 19th day of April, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/SUSAN M. ROE
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